



# Mary Hubler

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## State Representative

### **Hubler Testimony – 2009 Assembly Bill 136**

#### ***Partially exempting an assessor from liability for trespassing***

#### **Assembly Committee on Urban and Local Affairs – May 5, 2009**

Thank you Chairperson Berceau and committee members for giving Assembly Bill 136 a hearing today and taking my testimony.

AB 136 would grant a partial exemption to assessors from liability for trespassing.

As a resident of mostly rural, northern Wisconsin I am keenly aware of the rights of private property owners and their legitimate desire to preserve privacy and maintain some freedom from government intrusion.

But people who are not specifically invited visit property all the time. Meter readers, mail carriers, employees of utilities attempting to fix power lines, conservation wardens, surveyors and many others may enter private property under specific circumstances.

This bill extends to assessors the right that surveyors have now. It preserves the rights of property owners to bar assessors and requires assessors to notify property owners that they have been on the premises.

The amendment I have offered is designed to address the reasonable objections by farmers and ranchers. It does not allow assessors to enter a building, agricultural land or pasture or a livestock confinement area. I respect the concerns of farmers for the safety of the assessors and livestock as well as their interest in keeping people from entering croplands.

Furthermore, I am aware of issues that such groups as real estate professionals have with this bill and am willing to work with them to make appropriate improvements.

But government and its communities have a legitimate stake in being able to accurately assess property. Property that cannot be fairly assessed cannot be fairly taxed. Property taxes are based on value, and value is based on a professional assessment of what the land and improvements are worth on the market.

Sometimes additions or improvements are made without proper permitting. Unless there is an examination by an assessor, the new value cannot be taxed and that part of the tax burden is essentially shifted to the neighbors. That is not fair to property owners who obtain the proper permits and allow reasonable access for assessment.

The inability of assessors to complete their tasks costs the taxpayers money. Assessors in rural areas are often compelled to travel long distances and may try to plan to assess several properties in a given area. My district is home to many second homes and vacation properties. At many of these places, the chances of finding someone home are slim. Return trips add to everyone's costs. All the assessors are asking is to be allowed to walk around the building without violating the law.

If an assessor knocks on a front door and notices a new deck on the side of the house, the assessor should reasonably be allowed to examine and measure the deck. To make an appointment to see the deck adds another trip and more expense.

Assessors are required to discover and list properties for assessment. If there is a fire number and a long driveway, they may be compelled to retreat without inspecting if the property at the end of the driveway is a pole shed rather than a residence.

If municipalities were compelled to provide notice for every assessment, the cost would be prohibitive.

AB 136 seeks to help preserve the important right of property owners to appeal an assessment. Under 70.47(7)(aa), no person may appear before a Board of Review to appeal their assessment if they have refused a reasonable written request by certified mail of the assessor to view their property.

This bill presumes that an assessment may take place unless the assessor has received a written or verbal notice not to enter the premises.

The notification provision of the bill makes it very easy for a property owner to legally keep an assessor off of his property. All he has to do is tell the assessor or the assessor's staff to keep off. A phone call or letter from the landowner or a discussion at the door or driveway will all suffice as notice to keep off.

This bill or ones like it have been offered every session for many years. Last session, Senate Bill 148, a similar bill, was passed by the Senate. Concurrence was recommended by the Assembly Committee on Rural Economic Development and the bill was sent to the Assembly Committee on Rules, where it expired.

That bill, like this one, had solid bipartisan support.

I remain committed to allowing a legitimate function of government to proceed, absent specific objections by property owners. I am willing to try to address whatever objections may remain by realtors or other groups.

Thank you.



## Memorandum

**To:** All Legislators

**From:** Tom Larson, Director of Regulatory and Legislative Affairs

**Date:** May 4, 2009

**Re:** SB 93/AB 136, as amended by Assembly Substitute Amendment 1 – Exempts Assessors from Trespassing Law

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For the past two sessions, the Wisconsin REALTORS® Association (WRA) has actively opposed SB 93/AB 136, legislation that would allow property tax assessors to enter onto private property without being subject to trespassing laws. While we support the efforts of local tax assessors to make sure everyone is paying their fair share of property taxes, we opposed the legislation because we believed that it would provide assessors with seemingly unlimited authority to enter onto private property and would infringe upon the fundamental rights of property owners to exclude others from entering onto their property.

However, Assembly Substitute Amendment 1 addresses most of our concerns related to the proposed legislation. Accordingly, upon adoption of this substitute amendment, the WRA will remove its opposition to SB 93/AB 136.

### Concerns and Proposed Changes to SB 93/AB 136

The following changes to SB 93/AB 136 have been proposed to address the concerns raised by the WRA:

- **Privacy concerns.** The concept of private property was based, in part, on the notion that individuals and their families should have some place to pursue their own interests without interference from neighbors, the public, or the government. By allowing assessors to enter onto private property without permission, this bill begins to erode the expectation of privacy associated with owning private property.
  - Proposed change
    - Specifically prohibits assessors from entering buildings or structures, opening doors or looking into the windows.
- **No limits on access.** Under the bill, assessors are given free reign to enter private property without limitation. For example, the bill does not limit when assessors can enter on to property (e.g., 24 hours a day, weekdays between 9 a.m. and 4 p.m.), how long they may stay on the property (e.g., 30 minutes, 2 hours, 6 hours), and the frequency of visits (e.g., 1 x/ every 4 years, annually, as often as they want).
  - Proposed changes
    - Allows assessors to enter onto property only on weekdays and during daylight hours, or as otherwise agreed to by property owner.

- Limit the amount of time an assessor may be on the property without permission to 1 hour.
  - Limit the number of times per year an assessor can enter onto property to no more than once per year (2 times for new construction).
- **No notice prior to entry.** Under the bill, property owners receive notice only AFTER an assessor has entered onto their property. Because no notice is required prior to an assessor entering onto private property, property owners will not know when an assessor will be visiting their property. This could create significant safety risks for both the property owner and the assessor.
- Proposed changes
    - Allow property owners to deny entry if they have given prior notice to the local assessor or assessor's staff.
    - Require local governments and assessors to create and maintain a database identifying those property owners that have contacted them and asked that the assessor not enter onto the property without permission.
    - Local government must publish a public notice on its website indicating the approximate dates of the property revaluation. If no website, local government must publish notice in at least 3 places within the community.
    - Requires assessors to provide property owners with written notice after entering onto the property indicating why they were there.
    - Property owner can ask the assessor to leave the property.

If you have any questions, please contact me at (608) 240-8254.